

REMARKS/ARGUMENTS

Process claims 1-8 are active. Product claims 9-12 have been withdrawn from consideration. The claims have been revised for clarity and to conform to U.S. guidelines. No new matter has been introduced. Favorable consideration of this amendment and allowance of this application are respectfully requested.

The Applicants thank Examiner Seaman for the courteous and helpful interview of May 14, 2009. Applicants pointed out differences between the reactants and products of the prior art and the documents applied in the anticipation rejection. It was agreed that process step or structural differences between the compounds of the prior art and those of the invention would avoid the anticipation rejection. However, the Applicants were advised that these documents might be applied in an obvious rejection if the structural differences in the reactant or resulting products were in portions of the molecules that did not participate in the reaction, e.g., in ring closing, or if they did not contribute to superior results realized by the process, e.g., make the process more economical by increasing yields, etc. Similar issues were discussed with respect to the obviousness rejection.

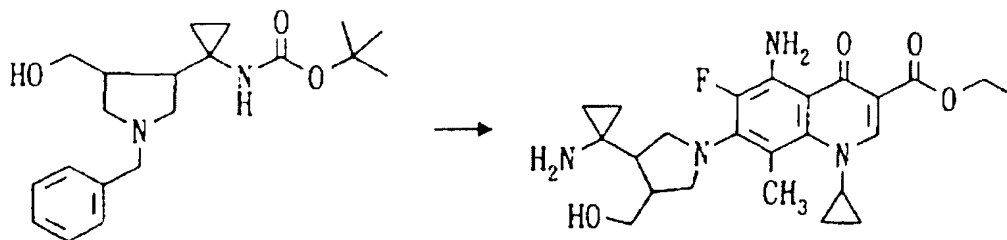
Restriction/Election

The Applicants previously elected with traverse **Group I**, claims 1-8, directed to a process for making a compound of formula (I). Claims 9-12, directed to products, have been withdrawn from consideration. The requirement has been made FINAL. The Applicants respectfully request that the claims of the nonelected group(s) or other withdrawn subject matter which depend from or otherwise include all the limitations of an allowed elected claim, be rejoined upon an indication of allowability for the elected claim, see MPEP 821.04.

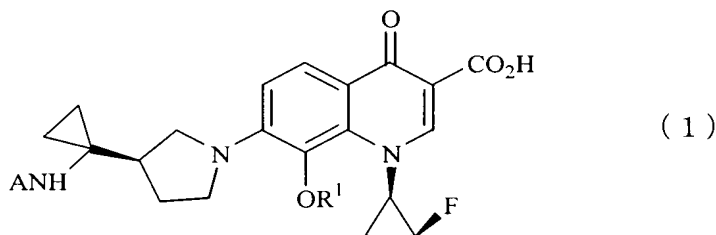
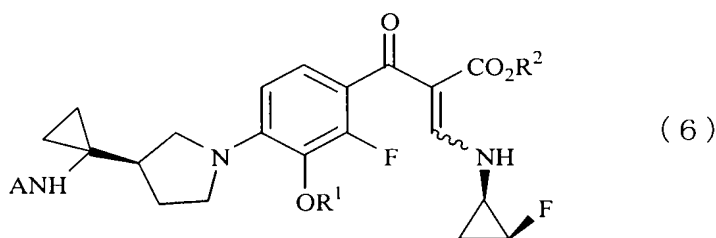
Rejection—35 U.S.C. §102(b)

Claims 1-8 were rejected under 35 U.S.C. 102(b) as being anticipated by Takemura, et al., WO 97/19072 (corr. to U.S. Patent 6,121,285) or Takahashi, et al., WO 2002-040478 (corr. to U.S. 2007/0123560; U.S. 11/644,901). These documents cannot anticipate the present claims because they disclose processes involving different reactants that that produce compounds differing from those of the invention.

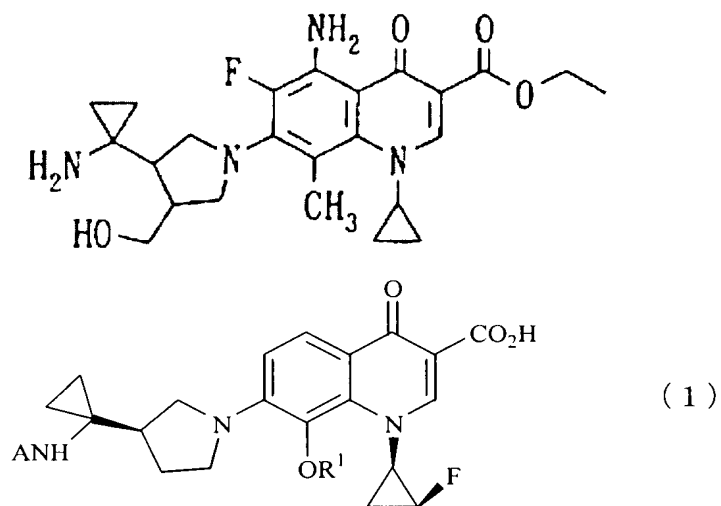
Takemura, WO 97/19072, the first cited reference, depicts a reactant, process steps, as well as a product differing from that of the invention, see Example 1 on page 27 of WO' 072 or col. 34 of U.S. '285). Takemura, page 27 reaction:



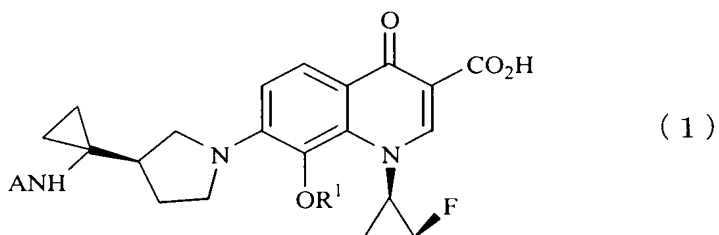
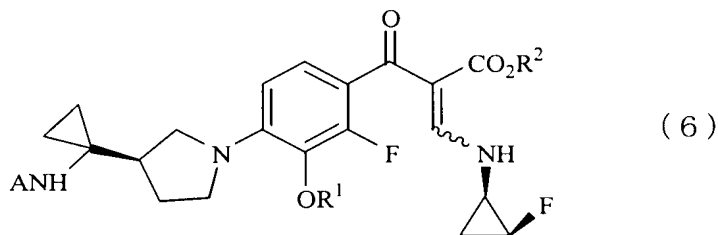
Process of the invention:



The prior art compound has an -NH_2 substituent on the phenyl ring (instead of hydrogen) and an opposing methyl group (instead of methoxy). Moreover, it is not disclosed to have the two stereospecific bonds involving the lower cyclopropane ring. (Takemura—top structure; formula (1) made by the present invention, below)



Takahashi does not disclose the reactant of formula (6) required by the process of the present invention, see schematic below:



Accordingly, this rejection cannot be sustained, because the cited art does not disclose the same reactants or process steps required by the present claims.

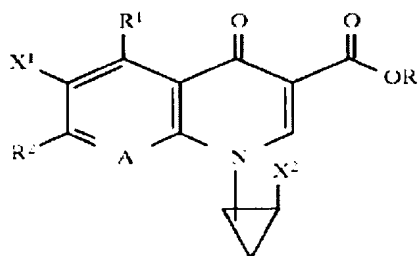
Rejection—35 U.S.C. §103(a)

Claims 1-8 were rejected under 35 U.S.C. §103(a) as being unpatentable over Takemura, et al., WO 96/23782 (corresponding to U.S. Patent No. 5,849,757). The cited art does not disclose the same process steps for making a compound of formula (I) and does not disclose or suggest the reactants or products of the claimed process.

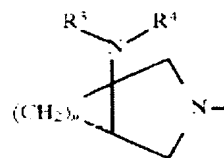
The rejection indicates that it would have been *prima facie* obvious to make the individual reactants described on pages 21 and 31 of WO '782 (and in cols. 14 and 23 of U.S. '757) and then combine them to produce the compound of formula (I). However, the present claims require conversion of a compound of formula (6) into the product of formula (1) and the Official Action does not explain how to obtain a compound of formula (1), nor does the prior art suggest treating a compound of formula (6) in a water-based solvent to produce that of formula (1). Thus, pages 21 and 31 of the cited prior art does not suggest the reactant of formula (6) nor how to convert it into the product of formula (1).

Furthermore, the compound produced by the process described by WO 96/23782 has a R2 group with a fused ring structure (see figure on right below) that differs from the corresponding group in formula (1) of the present claims which comprises discrete 3- and 5-membered rings-see also Inventive Example 1 in col. 33 of U.S. Patent No. 5,849,757. (However, it is noted that this reference does disclose a substituent similar to the one substituted at position 7 of the quinolone compound (1) of the present invention at cols. 7, 13 and 14, etc.)

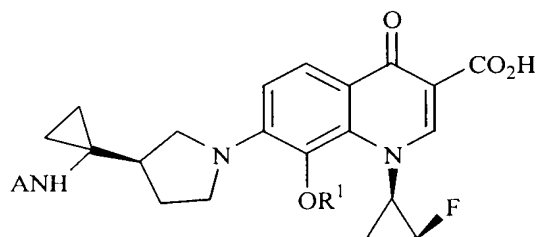
Prior art product:



(I)

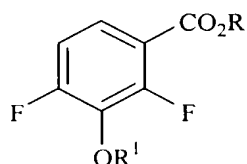


Formula (I) produced by the presently claimed process:

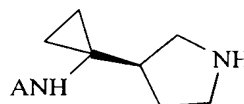


(1)

Moreover, pending claim 5 requires additional reactants not disclosed by the prior art. The reaction schemes on pages 21 and 31 of WO 96/23782 do not disclose the reactants described by claim 5, namely the compounds of formula (2) or the compound it reacts with:



(2)



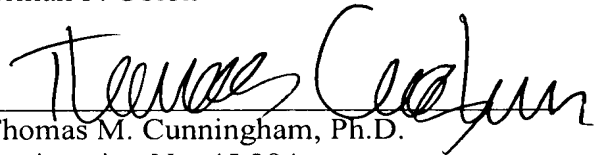
This rejection cannot be sustained, because the prior art does not disclose all the elements of the invention, nor does it provide a reasonable expectation of success for producing the stereospecific compound of formula (I). Accordingly, this rejection cannot be sustained.

Conclusion

In view of the amendments and remarks above, the Applicants respectfully submit that this application is now in condition for allowance. An early notice to that effect is earnestly solicited.

Respectfully submitted,

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MAIER & NEUSTADT, P.C.
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A handwritten signature in black ink, appearing to read "Thomas Cunningham", written over a horizontal line.

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